

## THE HAYTI HERALD

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HAYTI, MISSOURI.

### EASILY SATISFIED.

Well, Guy, if you just won't come back, we can't help it. It occurs to us, however, like the pound cake to the farmer when he took his first trip on a steamboat. Seating himself at the table at meal time, and remaining per-

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PETER STREIFF, Hayti, Mo.

fectly oblivious to the menu card and bill of fare proffered him by the waiter, he began to gulp down great hunks of a pound cake that adorned the center of the table.

The waiter finally enquired of him if he wouldn't take something else.

"No," said the old farmer, "this pumpkin pie is good enough for me."

So Guy is feasting on socialism, when something else might "stick to his ribs" better.

If Guy was in a different community, however, he might receive a greater reward for his labors in behalf of his new faith.

In the matter of the decision of the supreme court giving the Hayti public square to the Hayes heirs, the Caruthersville Argus says it has not read the decision and does not know what it is, but proceeds as follows:

By an improper decision at the trial, Judge Riley decided in favor of the plaintiffs, the defendants promptly appealing. It is stated, that the decision at that time was prompted by political conditions and that Judge Riley himself admitted as much to Mr. Williams, Caruthersville Argus.

Now, the truth is, the decision of the supreme court sustained and upheld the decision of Judge Riley and said that his decision was correct, the full text of which is published elsewhere. The remarks of the Argus, as usual, are very unfair to Judge Riley—and why?

It has been said by a certain neighbor editor that he never could tell where to place the Herald—where it was going to land next—and that it was entirely too fresh. This is because the Herald has a brain and a way of its own, is original, and always correct in its statements.

The Hayti court house square question was settled in the supreme court last week and Caruthersville now has legal right to the property. Caruthersville Republican.

Not on your tintype, Sonny. The citizens of Hayti still have some rights, and there are other questions for the courts to decide.

### The Frisco Expanding.

The St. Louis & San Francisco R. R., organized originally with the intention of constructing a line through to San Francisco, and operated for many years as the eastern division of the Atlantic and Pacific R. R., has made a traffic arrangement with the Atchison, Topeka & Santa Fe Ry. Co., and established offices on the Pacific coast.

This company operates over 7,000 miles of railroad, and reaches St. Louis, Kansas City, New Orleans, Birmingham, Memphis any many other of the large interior cities with its own rails.

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(Continued from page one).

### Supreme Court Decision.

of land as are therein named, described or intended for public use in such city, town or village, when incorporated, in trust for the use therein named, expressed or intended, and for no other use or purpose.

According to the designation in the plat in this case, Block 29 was dedicated to Pemiscot county for courthouse purposes. It is so named, expressed and intended on the face of the plat. Under the statute, therefore, the county held such block in trust for courthouse purposes, and for no other use or purpose. This statute has been construed by this court and held to limit the use to the use expressed in the dedication. The county cannot use the land for any other public use than the one expressed, and it has no power, of course, to divert the land to any private use. (Board of Regents v. Painter, 192 Mo. 1, c. 479; Price v. Thompson, 48 Mo. 1, c. 365; Cummings v. City of St. Louis, 90 Mo. 1, c. 267; Thomas v. Hunt, 151 Mo. 1, c. 462; Snoddy v. Bolen, 122 Mo. 1, c. 491.)

Counsel for respondents cites, and strongly relies upon, Reid v. Board of Education, 73 Mo. 295. In this case the block in controversy had written upon it in the plat the words "public square." Under the head of "reserves," number 8 on the plat, appeared the following: "Block number 8 declared public property for the purpose of containing the courthouse, should the town be selected for the county seat." The quit-claim deed on the reverse side of the plat, after mentioning streets and alleys, says "also Block number 8, according to the within plat or plan of the town which shall be and remain the property of said county of Lewis for the purposes aforesaid forever." The court held that, considering all that appeared on the face as well as the reverse side of the plat, the block, nine, was dedicated to general public use. In that case it was a question of construction to determine what

use was specified. The court properly construed the plat to dedicate the block to public use, in the case at bar there is no such question. It is clear that the use was specified and limited to courthouse purposes, and equally clear that under the statutes and decisions of this court, the county could not hold the land for a different use.

The real question in this case is, when, if at all, does the land conveyed to county by the statutory dedication revert to the donors. First, does it revert under any circumstances? Dillon on Municipal Corporations, § 101, section 628, lays down this rule: "Property unconditionally dedicated to public use or to a particular use does not revert to the original owner except where the execution of the use becomes impossible. If the dedicated property is appropriated to an unauthorized use, equity will cause the trust to be observed or the obstructions removed. This rule has been approved by this court."

In Good v. St. Louis, 113 Mo. 257, Sherwood, J., cites and approves this rule. But upon the case at bar, in the case, which showed that the specified use was feasible, there was no impossibility of its exercise, that in case of a delay, it could be carried out, and that the use was not perpetual, and that the fee vested in the heirs of the donors, free from the use, Judge Sherwood, commenting on this case in Good v. St. Louis, supra, says that by the action of the municipal authorities the execution of the use had become impossible. Yet it was still physically possible to restore this park to its original specified use.

If, as this court has decided, the complete abandonment of a use, such as abandonment of the use of a park, is equivalent to impossibility of use, it must follow that when the local situation is such that the county cannot carry out the use, such use becomes impossible of execution.

It is quite true, as contended for by the learned counsel for respondents, that the delay in the use will not work a reversion. The cases cited to support this contention, however, present facts which show that the specified use is certain to come in time, and will be essential to the natural and harmonious development of the city or town. In the case at bar, the delay and total failure. The case of City of St. Louis v. Mo. Pac. Ry., 111 Mo. 13, cited by respondents, presents facts showing that the city owned the property in controversy for a street which, when improved, would effect a continuation of the street to the rear front. It was properly held that mere delay in the improvement, certain to come some time in the future, did not affect the city's rights, and that the time when the improvement should be made was a matter of discretion with the city authorities.

The vital question, therefore, is, has it become impossible to use the block for the purpose expressed by the donors in the dedication? The cases cited above refer to situations where there was no total abandonment of the specified use, such abandonment being held to be equivalent to an impossibility. Here we have a case where such use has never been effected or attempted. We do not doubt that when this plat was filed the fee in Block 29 passed to the county, in trust, for courthouse purposes, and so long as the property might be so used the fee remained in the county as such trustee. It is no, however, as respondents contend, an absolute, unqualified ownership in the county. It cannot be such, as stated above, the property may revert by complete abandonment or impossibility of use. When this plat was filed, there was what appeared to the donors and the public, and there is every indication that the county seat would be there located, and, of course, the dedication was made in contemplation of such expected location, but when the county seat was permanently located at Caruthersville, did it not become impossible for the county to execute the trust by using this block for courthouse purposes? We think it did. It is to be presumed that the county seat would be located there. But even if this presumption should fall there is no ground suggested to support any reasonable expectation that the county seat would be changed in the future it will go to Hayti city. The possibility that the block may be used at some time in the future for courthouse purposes is too remote to be regarded as a substantial basis for the trust to rest upon. As a practical matter, the execution of this trust has become impossible, and, under the authorities above cited, the land reverts to the heirs of the original donors.

We hold that the county could not divest itself of the trust by a deed back to the heirs. But the fact that the authorities made the order, with the recitals above quoted, shows that they regarded the county seat as permanently located at Caruthersville, and that the trust thereby became impossible of execution.

Under all the facts in this case as shown by the record, and the execution of the use impressed upon the land by the dedication to be impossible as that term should properly be construed.

The finding of the trial court that the order of the county court, and the deed made in pursuance thereof, were void, was correct, but if the judgment of that court as a whole should be affirmed, it would leave the matter, as we stated at the beginning of this opinion, still open for litigation. In order to establish now, finally, the right of ownership in said Block 29, the judgment is reversed, and the cause remanded, with directions to the circuit court to enter a decree vesting the fee in said Block 29 in the defendants.

FRANKLIN FERRISS, J. KENNISIL P. J., and BROWN, J., concur.

The above is the decision of the supreme court of the State of Missouri in the now famous public square case, and in commenting upon same it is not our purpose or intention to condemn nor to speak disparagingly of that high tribunal. Of course we do not understand fully how the supreme court decided that the act of the county court in deeding the property back to the Hayes heirs was null and void and that the decision of Judge Riley in so finding was correct, and then make its own finding against us, unless the records and evidence before the supreme court should be very meager, imperfect and obscure; in fact, the decision seems to indicate that the supreme court knew very little of the true nature of the case, and, perhaps, if this court had known more, the decision might have been different.

To begin with, however, the decision, as we understand it, effects only the title of Pemiscot county to the square, and, while the county is divested of any further right, claim or title to the property, the way is now open for the property owners of

Hayti to set up their claim, by reason of the fact that the plat of the town calls for such square, along with the streets and alleys and the public school grounds, to remain forever open to the public, and it was with this understanding and with reference to this plat that every lot in Hayti was sold and bought.

The decision is quite lengthy and at this time we shall only briefly dwell upon a few points in the briefest manner possible, and at some future time we may cover the grounds more fully.

The points of the decision to which we desire to call attention at present are as follows:

It cannot be truthfully said that at the time this block was dedicated the county seat question was in agitation, as the county seat was then "permanently located" at Gayoso, but on account of the caving banks of the Mississippi river at that place it was thought that removal might be a necessity at some future time. Hayti was conceived as a town on account of its desirable location, in the center of the county, and, in planning the town, it was desired to have a public square, as that would give greater value to business property. So the town was platted, and, as an inducement to get people to settle here and buy property, this public square was dedicated to the county for courthouse purposes, making it possible, if the county seat should ever be removed from Gayoso, and if it should come to Hayti, for the county to have a clear title to the ground on which to build, at no expense to the tax-payers of the county. The dedication carried no provisions as to time, as the block was permanent, and might be just as available at the end of 1000 years as it would be at the end of one year.

The language of the decision that "it appears that some lots were purchased in this new town, and adjacent to Block 29, in the belief that the county house was to come there," is not a statement of the facts as they really exist, as all the lots in the city have been sold, and the people, in buying these lots, did so according to the plat of the town, which showed upon the face of it that this block was open for public uses, and business houses were built on every side of the square. If it had been known that this square was not to remain open there would have been no inducement to build around the square, but straight or business streets would have been established. Besides, lots on the square have always been worth many times the value of the lots off of the square.

The language, "permanently located at Caruthersville," is another expression we do not understand, for there is no such thing, under our present laws, as a county seat being permanently located, as the laws provide for the removal of county seats, and sets out how an election for the removal of the same may be had every five years. Until this law is repealed by the legislature, there is no such thing as any county seat being permanently located.

That the time may be very "remote" when, if ever, this block might be used for courthouse purposes, should not affect the rights of those people who have bought property around this square, and, by paying a much greater price for the property on account of the existence of the square, the donors and their heirs were more than reimbursed for the land they had donated. When this block is destroyed as a public square, the value of the property and value of buildings around it are virtually destroyed. The mere existence of the dedication of such a piece of property in the county, dedicated for courthouse purposes, does the county no harm, is no expense, and no peril, and the donors and their heirs, having already received their pay, on account of the increased price at which adjacent property was sold, seems sufficient reason why the square should be permitted to remain for the beauty and pleasure of the people who have bought the property and builded a city.

The last paragraph in the decision says that Judge Riley was correct when he decided that the act of the county court in deeding the block back

to the donors was null and void, but that in order to end future litigation, they remanded the case to the circuit court with directions to find the title in the defendants. This, in our opinion, is the most peculiar part of the whole decision, and is worthy of special notice, as instead of ending future litigation, it brings on more litigation.

In this case, the matter of litigation is far from ended, but is just begun, with a vim and a determination never before manifested. Many fine brick houses have been built around this

square, and the people of Hayti have spent hundreds of dollars improving and beautifying it. We have erected a \$10,000.00 city hall on the square, placed a nice fence around it, graded the grounds and planted grass and trees, and now we are going to contend for that which is ours. We hold that this square belongs to the property owners of Hayti, and we are going to fight it out along these lines. The legal battles have already been long and tiresome, but we feel that we are right, and that in the end we must win.

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